

Original filed 8/16/06

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7 NOT FOR CITATION
89 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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DARRELL MCGHEE,)	C 06-0744 JF (PR)
Petitioner,)	ORDER DENYING MOTIONS TO
vs.)	PROCEED IN FORMA
SCOTT KERNAN, Warden,)	PAUPERIS AND TO PAY FILING
Respondent.)	FEES WITHIN THIRTY DAYS;
)	DENYING MOTION FOR
)	APPOINTMENT OF COUNSEL
)	WITHOUT PREJUDICE
		(Docket Nos. 2, 3, 5)

18 Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas
19 corpus pursuant to 28 U.S.C. § 2254. Petitioner also filed two motions to proceed in
20 forma pauperis and a motion for appointment of counsel. The Court will DENY
21 Petitioner's motions to proceed in forma pauperis and order Petitioner to pay the filing
22 fee and DENY Petitioner's motion for appointment of counsel without prejudice.
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DISCUSSION24 A. Motions to Proceed In Forma Pauperis

25 Petitioner filed two motions to proceed in forma pauperis, but his trust account
26 documents reveal that for the six months preceding the filing of this petition, Petitioner
27 had average monthly deposits of \$ 28.00, and an average balance of \$13.00. This is
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Order Denying Motions to Proceed in Forma Pauperis and to Pay Filing Fee Within Thirty Days; Denying Motion
for Appointment of Counsel Without Prejudice

sufficient to pay the \$5.00 habeas filing fee. Accordingly, Petitioner's motions to proceed in forma pauperis (docket nos. 2, 5) are DENIED. Within **thirty days** of the date this order is filed, Petitioner shall pay the \$5.00 filing fee. Petitioner shall include with his payment a clear indication that it is for this case number, C 06-0744 JF (PR). Failure to pay the filing fee within **thirty days** of the date this order is filed shall result in the dismissal of this action without prejudice.

B. Motion For Appointment of Counsel

Petitioner filed a motion for appointment of counsel. Petitioner asserts that appointment of counsel is necessary because he has no training in the law, he has limited law library access, and the instant petition states a *prima facie* case for relief. See Pet.'s Mot. at 1.

The Sixth Amendment's right to counsel does not apply in habeas corpus actions. Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). However, 18 U.S.C. § 3006A(a)(2)(B) authorizes appointment of counsel to represent a habeas petitioner whenever "the court determines that the interests of justice so require and such person is financially unable to obtain representation." The decision to appoint counsel is within the discretion of the district court. See Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986), cert. denied, 481 U.S. 1023 (1987); Knaubert, 791 F.2d at 728; Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir.), cert. denied, 469 U.S. 838 (1984).

The Court concludes that the interests of justice do not require appointment of counsel at this time. The Court has yet to review the claims set forth in the instant petition, nor the merits of these claims. Appointment of counsel is premature at this stage of the proceedings. Accordingly, Petitioner's motion for appointment of counsel (docket no. 3) is DENIED without prejudice.

IT IS SO ORDERED.

DATED: 8/16/06



JEREMY FOGEL
United States District Judge

1 A copy of this ruling was mailed to the following:

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